

**RESPONSE UNDER 37 C.F.R. § 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 2100**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor : Harry Tiotantra	
Appln. No.: 10/826,021	
Filed : April 16, 2004	Group Art Unit: 2115
For : DATA STREAMING SYSTEM WITH ENVIRONMENTAL SENSOR	Examiner: Albert C. Wang
Docket No.: S104.12-0088	

**REMARKS IN CONNECTION WITH PRE-APPEAL BRIEF REQUEST
FOR REVIEW**

ELECTRONICALLY FILED AUGUST 17, 2007

Sir:

This Request for Review is filed in connection with a Pre-Appeal Brief Request for Review and Notice of Appeal in the present application. Applicant believes there are omissions of one or more central elements needed for a prima facie rejection.

As described in the instant specification, the present invention relates to playback devices which use data storage devices. The data storage device provides an intermittent stream and an environment sensor provides an output which is used to generate a "time-to-fill estimate" 324 shown in Figure 3 of the present application. The time-to-fill estimate is related to a maximum rate at which the data storage device is capable of delivering data under current environmental predictions (page 4, lines 26-28).

As illustrated in Figure 3 and discussed in the section beginning at the bottom of page 6 of the instant specification, a comparator is used to energize the device when a time-to-exhaust estimate 322 drops down to the same level as the time-to-fill estimate 324 which is illustrated at crossover point 330 in Figure 3. At this time, the comparator causes the device to be energized.

In the Office Action of February 20, 2007, the claims were rejected based upon Hodge et al. (U.S. Publication No. 2004/0252397) in view of Millikan et al. (U.S. Patent No. 6,928,039).

However, this combination does not show all of the elements as set forth in the pending claims.

Independent claims 1, 15 and 24 all describe a “variable time-to-fill estimate.” This is not shown by the Hodge or Millikan references. In the paragraph at the bottom of page 4 of the Office Action of February 20, 2007, Millikan is cited as teaching, “comparing time-to-fill and time-to-exhaust estimates to control energization of a data storage device (col. 3, line 59 – col. 4, line 24; col. 4, line 55 - col. 5, line 13.)” However, this section of Millikan does not show any “variable time-to-fill estimate” as set forth in the pending claims. Millikan at col. 4, lines 8-21 does describe a fixed time period which is simply related to startup time of the CD player.

As the cited references do not disclose all of elements of the independent claims, it is believed that the present application is in condition for allowance. Consideration and favorable action are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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